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Rents and Race

Legacies of Progressive Policies

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WILLIAM L. ANDERSON AND DAVID KIRIAZIS

Responding to a proposed 1898 law that would racially segregate rail cars in South Carolina, the *Charleston News and Courier* editorialized the proposal as ridiculous. The newspaper declared of race relations: “As we have got on fairly well for a third of a century, including a long period of reconstruction . . . we probably can get on as well hereafter without it [the proposed law], and certainly so extreme a measure should not be adopted and enforced without added and urgent cause.” The editorial did not stop there. Instead, it employed *reductio ad absurdum* rhetoric to declare that if rail cars were to be segregated, there also should be Jim Crow “eating cars,” the “Jim Crow Bible for colored witnesses to kiss,” and beyond (qtd. in Woodward 1974, 67–68). In other words, legal segregation on rail cars not only was unnecessary, but also preposterous.

Yet within a decade South Carolina and most southern states *did* have the Jim Crow eating, housing, bathrooms, and, yes, Bibles for “witnesses to kiss” and beyond, and even the *News and Courier* would endorse the same policies that it had formerly ridiculed. Historians for the most part see the explosion of Jim Crow laws at the end of the nineteenth century and the beginning of the twentieth century that required African Americans to be segregated from whites as a natural progression of racism that followed the Civil War, along with the social upheavals that followed as black chattel slavery was ended by military force.

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In his popular book *The Strange Career of Jim Crow* (1974), C. Vann Woodward documents the rise of Jim Crow laws, yet he also claims that this development was ironic because it occurred during the Progressive Era. It is unthinkable to many historians to connect progressivism, with its emphasis on business regulation and reform, to an American era of apartheid. Instead, they seem to think along the same lines as David Southern (1968), who writes that race was a “blind spot” with Progressives and their otherwise worthy social agenda.

This essay, however, argues with this view, directly connecting progressivism and institutional racism, especially Jim Crow laws. Just as Murray Rothbard (1989) demonstrated the important link between progressivism and the American entry into World War I, we intend to demonstrate that the institutional racism of Jim Crow did not occur *in spite of* the Progressive moment, but rather *because of* progressivism and that it is linked specifically to the Progressive agenda of economic regulation. Furthermore, we do not draw our conclusions because some Progressives (such as Woodrow Wilson) personally were virulent racists, but rather because the regulatory institutions that Progressives created enabled the Jim Crow system. Progressivism, focusing on economic and social regulation, created new economic rents for which different groups of people would compete against one another, accentuating the already-existent ethnic divides. Because many Progressives believed that political and economic elites should rule society, it is not surprising that many of them turned toward eugenics (Leonard 2005), which would only serve to exacerbate racial conflict.

Progressives mixed ideology, science, and economic regulation and eschewed the original protections given by the U.S. Constitution, believing that the decentralized form of federalism and things such as private-property rights and limits to government actions stood in the way of social reform. Woodrow Wilson (1885) wrote that the constitutional system of checks and balances was outdated and needed to be eliminated or seriously changed. It was Wilson who firmly institutionalized Jim Crow policies in the federal government, where they would remain entrenched until after World War II. It was also during Wilson’s term of office that the second movement of the Ku Klux Klan was formed with the president’s blessing (Freund 2002).

There already is a wealth of literature on the Progressive movement, so this essay concentrates narrowly on the racial legacies of progressivism as they pertain to economic regulation. We examine literature dealing with the effects of the regulatory regimes brought on by Progressive “reforms,” and then we apply that analysis to how these “reforms” affected race relations in the United States during that period.

We first link Jim Crow viewpoints with Progressive politicians. We then use economic analysis to demonstrate how the development of Jim Crow laws dovetailed with the Progressive economic “reforms” to create economic rents that could be exploited by whites and by the politicians who helped to create those reforms.

Jim Crow and the Progressives

As stated in the introduction, we intend to demonstrate that Progressives did not vacillate between the “high ideals” of economic regulation and the baseness of racism. Instead, they were for the most part racists who wove views on economic regulation into their larger social theories.

Woodward (1974) writes that Progressives “capitulated” to Jim Crow, as though they did so reluctantly, and Southern (1968) argues that institutional racism was a “blind spot” of Progressives, but the record tells a different story. Progressives did not begrudgingly accept the tenets of Jim Crow but instead were in the vanguard of establishing the American apartheid system. John Dewey, John R. Commons, Herbert Croly, Lyman Abbott, Charles Francis Adams Jr., Hoke Smith, Thomas Nelson Page, James Boyle, John W. Burgess, Herbert Baxter Adams, and his idealistic student Woodrow Wilson represent the leaders not only of Progressive economic and social theories, but also of the racial purity and segregation viewpoints that became legal and social policy in the United States (Southern 1968).

If there was a catalyst for the adoption of these viewpoints, it was Darwinism and the theory of evolution. Southern writes:

The scholarly liberals denied that society or economic enterprise should be a vicious struggle for existence, and they denounced the negative and amoral view of government espoused by Darwinist conservatives. Still the very same progressives most inconsistently lauded the “struggle of the races,” and concluded that an inferior race like the Negro deserved no better than second-class citizenship. For instance, Edward A. Ross of the University of Wisconsin was a commanding figure who vehemently opposed the philosophy of *laissez-faire* as nothing but a vile corruption of Darwinism. (1968, 49)

Southern further writes of Ross, who advised Progressive Wisconsin politician Robert La Follette:

While discarding [Herbert] Spencer’s biological analogies to politics and society, Ross did not hesitate to employ them freely in his defense of racism. In *The Old World in the New* Ross stigmatized all the “new immigrants” as “strikebreakers and scabs” from lower races. They were alcoholics, unhygienic, and prone to insanity. He cried out against the millions of inferior immigrants who were lowering the character of America. A nation must have a “pride of blood” and an “uncompromising attitude toward the lower races,” he declared. As might be expected, Ross employed his racist arguments against the ill-bred Negro. (1968, 49–50)

Decrying what he sees as the disconnect between the supposed ideals of Progressives and their racial viewpoints, Southern writes of John R. Commons, founder of the American Economic Association and *American Economic Review*, “[O]n matters pertaining to race, Commons seemed more of a reactor than a thinker. Ross’ racism was connected with his opposition to immigration, but in his harangues against immigrants he did not fail to chastise the Negro race. In *Races and Immigrants* (1907), Commons wrote that all tropical races were ‘indolent and fickle.’ The only way that a Negro would adopt the strenuous life of the Anglo-Saxon, he said, was by some kind of coercion. Moreover, the Negro was ‘lacking in the mechanical idea’ so necessary for an advanced industrial society” (1968, 50).

At best, writes Southern, some Progressive leaders tended to be ambivalent about race. For example, Croly, while claiming that “the Negro was morally and intellectually inferior” to whites, nonetheless did not attack American blacks as did Ross and Commons (Croly 1909, 81). Nor did Walter Lippman or Walter Weyl, though neither believed that much could or should be done to bring about racial equality. Weyl wrote, “The Negro problem is the mortal spot of the new democracy,” and, like Southern nearly fifty years later, he believed it still to be a blind spot (Weyl 1912, 342).

Intellectuals, however, usually don’t write laws or impose public policies. Politicians do, and many Progressive politicians of that age clearly were not racial moderates. Even if the intellectuals at best were ambivalent about the “Negro question,” the politicians were not; the Negro was to have no part in the “Progressive America” except to be forced into lower social and economic castes.

The racism of Progressive politicians was *institutional and enforced by law*. The *Charleston News and Courier* could editorialize that legally enforced segregation did not have to be instituted because the postwar South had been able to get along without it for three decades. For example, during his first term in office (1885–89), President Grover Cleveland entertained Frederick Douglass and his *white* wife numerous times in the White House, and there was no public outcry (Southern 1968, 5). However, when President Theodore Roosevelt had Booker T. Washington as a White House guest in 1901, Senator “Pitchfork Ben” Tillman of South Carolina declared that the visit “will necessitate our killing a thousand n*ggers in the South before they learn their place” (qtd. in Southern 1968, 4). Indeed, Tillman came to power primarily using racially charged rhetoric, which contrasted to his political predecessors, such as Governor Wade Hampton, who had appealed to the better side of South Carolina’s voters in the 1870s and had governed as a racial moderate.

In 1878, northern abolitionist Wentworth Higginson toured the South to see what, if any, racial changes had occurred since the war’s end. According to David Southern, he “found the acceptance and treatment of the Negro better in the South than in the North. Negroes were not segregated on trains or in other public conveyances.” Southern adds, “When Higginson returned to the South in 1884, he found no reason to change his thinking” (1968, 7).

Robert Higgs ([1977] 2008) writes that despite racist views by whites and despite the residual interracial violence and discrimination that existed after the Civil War, black Americans made significant economic and social gains. Many of those gains, however, occurred *before* the onslaught of Progressive economic regulation and the imposition of Jim Crow.

Thus, one cannot claim that the institutionalized racism that came with progressivism simply was based on residual racism that existed after the war, as though the racial attitudes of that time inevitably would end in Jim Crow. Furthermore, the worst offenders politically speaking, were outspoken Progressives such as Senator Tillman. Woodward writes:

The omission of the South from the annals of the progressive movement has been one of the glaring oversights of American historians. Not only were all the phases and aspects of the movement acted out below the Mason and Dixon line, but in some particulars the Southern progressives anticipated and exceeded the performance of their counterparts in the West and East. They chalked up some spectacular gains against the bosses and machines, the corporations and railroads, the insurance companies and trusts. They democratized politics with direct and preferential primaries, with corrupt-practices and anti-lobby acts, with initiative and referendum. They scored gains in humanitarian legislation for miners, factory workers, child labor, and the consumer.

The blind spot in the Southern progressive record—as, for that matter, in the national movement—was the Negro, for the whole movement in the South coincided paradoxically with the crest of the wave of racism. Still more important to the association of the two movements was the fact that their leaders were often identical. (1974, 90–91, emphasis ours)

On the national level, the political situation was little better, and it culminated in the presidency of probably the most virulent racist ever to occupy the White House, Woodrow Wilson. Theodore Roosevelt, although harboring typical (for then) racial sentiments, did not go out of his way to antagonize blacks, with the exception of the Brownsville incident of 1906.¹ Whereas Roosevelt was relatively silent on race, Wilson was not. Writes Charles Paul Freund:

It was Inauguration Day, and in the judgment of one later historian, “the atmosphere in the nation’s capital bore ominous signs for Negroes.” Washington rang with happy Rebel Yells, while bands all over town played

1. After some black U.S. soldiers stationed near Brownsville, Texas, allegedly “shot up the town” and killed one person and wounded two others, Roosevelt dismissed the entire battalion. Inquiries into the incident tended to exonerate the soldiers, although Roosevelt did not back down from his earlier decision (Rucker and Upton 2007).

“Dixie.” Indeed, the Chief Justice of the Supreme Court, who swore in the newly elected Southern president, was himself a former member of the Ku Klux Klan. Meanwhile, “an unidentified associate of the new Chief Executive warned that since the South ran the nation, Negroes should expect to be treated as a servile race.” Somebody had even sent the new president a possum, an act supposedly “consonant with Southern tradition.” (2002)

This is not an alternate world scenario imagining the results of a Strom Thurmond victory in the 1948 election; it is the real March 4, 1913, the day Woodrow Wilson of Virginia moved into the White House. Freund continues:

Wilson allowed various officials to segregate the toilets, cafeterias, and work areas of their departments. One justification involved health: White government workers had to be protected from contagious diseases, especially venereal diseases, that racists imagined were being spread by blacks. In extreme cases, federal officials built separate structures to house black workers. Most black diplomats were replaced by whites; numerous black federal officials in the South were removed from their posts; the local Washington police force and fire department stopped hiring blacks. Wilson’s own view, as he expressed it to intimates, was that federal segregation was an act of kindness. (2002)

Progressive historians may champion 1913, when Congress created the Federal Reserve System, the income tax, and direct election of senators (the latter two through constitutional amendments), but Southern points out that from 1913 to 1915 “a torrent of bills proposing discriminatory legislation against Negroes, more than any other Congress in American history,” was passed (1968, 80). All that would be left for the Progressives was the implementation of Prohibition and entry of the United States into World War I, which Rothbard (1989) calls the “fulfillment” of the Progressive Era.

Historians often portray Wilson as a visionary, a great reformer of the American society and economy—albeit a reformer with a “blind spot” regarding race. For example, Harvard historian Erez Manela, in a review of the biography *Woodrow Wilson* by John Milton Cooper Jr., describes Wilson in near-reverent tones:

Readers who associate Wilson’s presidency primarily with foreign affairs will discover him as a forceful leader on domestic issues, in every way equaling—Cooper would argue, besting—his famously vigorous rival, Theodore Roosevelt. His legislative legacy included the Federal Reserve Act, the income tax, major antitrust laws, and the first laws on child labor, federal aid to farmers, and the eight-hour workday.

Wilson’s fight against Wall Street, in particular, offers poignant parallels with our own time. The big banks, then as now, fought fiercely against

regulation, and Wilson's adviser, Boston's "people's lawyer" Louis D. Brandeis, presciently warned that the conflict between reform and the "desires of the financiers" was "irreconcilable" and counseled him to stand firm. In fact, Wilson's most lasting blow for the cause of reform may well have been his historic appointment of Brandeis to the Supreme Court. (2009)

Almost as an afterthought, Manela notes that Wilson did have some flaws: "Like many biographers who have spent decades with their subject, Cooper writes with great sympathy for his. He is not, however, an uncritical admirer. He judges Wilson's willful disregard for the rights of African-Americans and his consistent refusal to act against racial violence as the greatest stain on his record as president, rivaled only by his administration's repression of dissent and curtailment of civil liberties during the war years" (2009).

The Progressive role in expanding economic "reforms" from the establishment of the Interstate Commerce Commission in 1887 to the aggressive expansion of antitrust legislation and policies in the first two decades of the twentieth century tend to win universal praise from Progressive historians. Even the Progressives' racism tends to be excused as a small stain on an otherwise sterling record. Yet we believe that view is shortsighted and argue that the Progressive economic "reforms" directly factored into the racial strife of that era.

Such "reforms" restricted the actions of entrepreneurs and capitalists, as Rothbard (1989, 1993) has noted. From the firm establishment of occupational licensing to wage and labor laws, Progressives pushed through law after law that pushed blacks out of occupations that had employed them for years, kept black entrepreneurs from accessing capital resources, and hobbled black businesses that competed with white-owned firms.

In the next section, we discuss how Progressives did not expand economic opportunities; they restricted them in the name of reform. Furthermore, by expanding the regulatory apparatus of both the state and federal governments, they created an atmosphere in which blacks were legislated into second-class citizenship to an extent that they still have not recovered from it. Progressive economic regulation was not a moral triumph to be contrasted with the sorry racial legacy of progressivism. Instead, it was part of the same package, something that most Progressive historians and other public intellectuals even today refuse to acknowledge.

Regulated Economies, Racial Strife, and Economic Rents

Progressive economic "reforms" actually were political movements that created economic rents, replacing what entrepreneurs had created before the new regulatory regimes were established. In turn, the rents created new economic interest groups that would depend on the political process to create and keep the advantages that they had gained through that process. Such practices, however, are necessarily

divisive because they require political authorities to choose between competing interest groups.

For example, the drive for occupational licensing grew during the Progressive Era, touted as a “reform” to ensure that competent professionals would provide needed services for customers and clients. According to Walter Williams, however, licensing has more pernicious effects: “The economic effects of occupational and business licensure are quite predictable. The most immediate effect of licensing is that the number of practitioners is smaller than it would otherwise be. . . . All of these licensure requirements raise the cost of entry, which leads necessarily to a smaller number of practitioners in the licensed activity” (1982, 68). The real effect of licensing, he goes on to say, has been to restrict the number of blacks in given occupations, keeping them from work in a chosen field. For example, one significant effect of taxicab restrictions in American cities, Williams says, is how they shut out black cabbies, which then must operate “underground” in order to make a living (1982, 77–81). (Many of the taxi restrictions were put into place during the 1930s, when Progressives had yet another burst of power as the administration of Franklin D. Roosevelt pushed through a number of measures that were aimed at restricting economic activity in order to reduce competition, which the Progressives and New Dealers claimed was “destructive.”)

Throughout the Progressive Era, economic competition was portrayed as destructive. Southern declares: “From Ulysses S. Grant’s administration to 1900, the rule had been big business and small politics, shrewd magnates and unessential politicians. The rich were stupendously so, and wealth found its way into the hands of a diminishing few. Economic liberty played havoc with human justice. In summing up the problem of industrialism, Walter Rauschenbusch wrote: ‘We have allowed private persons to put their thumb where they can constrict the life blood of the nation’” (1968, 20). Thus, in such a view, any attempt to restrict the activities of business owners and entrepreneurs would be seen as striking a blow not only against economic freedom, but also *for* the betterment of humanity. Market restrictions *and* racial justice should go together in such a viewpoint. Indeed, Williams notes in *South Africa’s War Against Capitalism* that South African anti-apartheid activists necessarily believed themselves to be anticapitalists. He writes: “The dominant black opinion in South Africa is that apartheid is an outgrowth of capitalism. Business people are often seen as evil forces seeking racially discriminatory laws as a means to higher profits through the economic exploitation of non-Europeans. Therefore, in the eyes of many black Africans and their benefactors in Europe, the United States, and elsewhere, a large part of the solution is seen as being—inter alia—in the promotion of socialistic goals, such as state ownership and income redistribution, as a means to bring about a more just society” (1989, 125).

However, as Williams so aptly notes in his book, the apartheid system depended heavily on the very kinds of economic restrictions that Progressives championed.

Ludwig von Mises points out that the Nazi regime used similar economic restrictions against Jews during the 1930s and 1940s:

In an unhampered market society there is no legal discrimination against anybody. Everyone has the right to obtain the place within the social system in which he can successfully work and make a living. The consumer is free to discriminate, provided that he is ready to pay the cost. A Czech or a Pole may prefer to buy at higher cost in a shop owned by a Slav instead of buying cheaper and better in a shop owned by a German. An anti-Semite may forego being cured of an ugly disease by the employment of the “Jewish” drug Salvarsan and have recourse to a less efficacious remedy. In this arbitrary power consists what economists call consumer’s sovereignty.

Interventionism means compulsory discrimination, which furthers the interests of a minority of citizens at the expense of the majority. Nevertheless discrimination can be applied in a democratic community too. Various minority groups form an alliance and thereby a majority group in order to obtain privileges for each. (1944, 182)

Armen Alchian and William Allen (1969) concur with Rothbard (1993) that economic/entrepreneurial profits come about when entrepreneurs direct resources from lower-valued to higher-valued uses as determined ultimately by consumers. However, as Alchian and Allen point out, state-sponsored economic restrictions also create monopoly rents that not only limit the supply of those things for which there are economic rents but also keep “more resources from being transferred to higher-valued uses sufficiently to bring values down to costs” (333).

As pointed out, the effects of state-sponsored restriction necessarily are a limitation of economic activity or what Mises would have called the hampering of the market, specifically the entrepreneurial activity that is fundamental to the workings of a free-market economy. By replacing markets that were relatively free with state-regulated entities, Progressive “reformers” created sets of economic rents that would be partially distributed through political means via interest groups. From this set of points, one easily can see how the Jim Crow legislation, including the disenfranchisement of American blacks, went hand in hand with the economic “reforms.”

Perhaps it is no accident that the rise of neo-Darwinist literature that portrayed blacks as not only inferior but hopelessly inferior to whites was associated with blacks being forced into lower-level occupations in which they would not be permitted to compete with whites. Damon Root writes in his review of Southern’s 2005 book *The Progressive Era and Race*:

At the heart of Southern’s flawed but useful study is a deceptively simple question: How did reformers infused with lofty ideals embrace such

abominable bigotry? His answer begins with the race-based pseudoscience that dominated educated opinion at the turn of the 20th century. “At college,” Southern notes, “budding progressives not only read exposés of capitalistic barons and attacks on laissez-faire economics by muckraking journalists, they also read racist tracts that drew on the latest anthropology, biology, psychology, sociology, eugenics, and medical science.”

Popular titles included Charles Carroll’s *The Negro a Beast* (1900) and R. W. Shufeldt’s *The Negro, a Menace to American Civilization* (1907). One bestseller, Madison Grant’s *The Passing of the Great Race* (1916), discussed the concept of “race suicide,” the theory that inferior races were out-breeding their betters. President Theodore Roosevelt was one of many Progressives captivated by this notion: He opposed voting rights for African-American men, which were guaranteed by the 15th amendment [*sic*], on the grounds that the black race was still in its adolescence.

Such thinking, which emphasized “expert” opinion and advocated sweeping governmental power, fit perfectly within the Progressive worldview, which favored a large, active government that engaged in technocratic, paternalistic planning. As for reconciling white supremacy with egalitarian democracy, keep in mind that when a racist Progressive championed “the working man,” “the common man,” or “the people,” he typically prefixed the silent adjective white.

For a good illustration, consider Carter Glass of Virginia. Glass was a Progressive state and U.S. senator and, as chairman of the House Committee on Banking and Currency, one of the major architects of the Federal Reserve Act of 1913. He was also an enthusiastic supporter of his state’s massive effort to disfranchise black voters. “Discrimination! Why that is exactly what we propose,” he declared to one journalist. “To remove every negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the white electorate.” (2006)

It is important to note that the racial propaganda that accompanied the Progressive movement was not enough in and of itself to result in the kind of massive racial discrimination of Jim Crow. As Mises noted regarding the situation of Jews in Germany, they had been subjected to “hate literature” for many years, yet “Aryan” Germans and Jews also had done business together:

Many decades of intensive anti-Semitic propaganda did not succeed in preventing German “Aryans” from buying in shops owned by Jews, from consulting Jewish doctors and lawyers, and from reading books by Jewish authors. They did not patronize the Jews unawares—“Aryan” competitors were careful to tell them again and again that these people were Jews. Whoever wanted to get rid of his Jewish competitors could not rely on an

alleged hatred of Jews; he was under the necessity of asking for legal discrimination against them.

Such discrimination is not the result of nationalism or of racism. It is basically—like nationalism—a result of interventionism and the policy of favoring the less efficient producer to the disadvantage of the consumer. (1944, 184)

In other words, commercial relations had gone on between Jews and others long before the Nazi government directly intervened into the economy to make such relations illegal. Likewise, southern whites and blacks interacted in business relationships for three decades before the Progressives sought to separate the races literally by force. As one can see with both situations, lawmakers sought to replace free association in business enterprise as well as all other social relationships with the straight-jacket of state-sponsored relations.

Many of the Progressives did not ignore the idea of people being shunted out of lines of work and being unable to earn a decent living for themselves and their families. Indeed, a large number of them saw this outcome as a *good* thing, and many of them turned to the implementation of the minimum wage as a device to accomplish that very thing. According to Thomas Leonard, a large number of Progressive economists believed that increasing the minimum wage would keep “undesirables” from finding employment, with one of those “undesirable” groups certainly being blacks. He writes:

Progressive economists, like their neoclassical critics, believed that binding minimum wages would cause job losses. However, the progressive economists also believed that the job loss induced by minimum wages was a social benefit, as it performed the eugenic service ridding the labor force of the “unemployable.” Sidney and Beatrice Webb (1897 [1920], p. 785) put it plainly: “With regard to certain sections of the population [the “unemployable”], this unemployment is not a mark of social disease, but actually of social health.” “[O]f all ways of dealing with these unfortunate parasites,” Sidney Webb (1912, p. 992) opined in the *Journal of Political Economy*, “the most ruinous to the community is to allow them to unrestrainedly compete as wage earners.” A minimum wage was seen to operate eugenically through two channels: by deterring prospective immigrants (Henderson, 1900) and also by removing from employment the “unemployable,” who, thus identified, could be, for example, segregated in rural communities or sterilized. (2005, 212–13)

Leonard continues:

The unemployable were thus those workers who earned less than some measure of an adequate standard of living, a standard the British called a

“decent maintenance” and Americans referred to as a “living wage.” For labor reformers, firms that paid workers less than the living wage to which they were entitled were deemed parasitic, as were the workers who accepted such wages—on grounds that someone (charity, state, other members of the household) would need to make up the difference.

For progressives, a legal minimum wage had the useful property of sorting the unfit, who would lose their jobs, from the deserving workers, who would retain their jobs. Royal Meeker, a Princeton economist who served as Woodrow Wilson’s U.S. Commissioner of Labor, opposed a proposal to subsidize the wages of poor workers for this reason. Meeker preferred a wage floor *because* it would disemploy unfit workers and thereby enable their culling from the work force. “It is much better to enact a minimum-wage law even if it deprives these unfortunates of work,” argued Meeker (1910, p. 554). “Better that the state should support the inefficient wholly and prevent the multiplication of the breed than subsidize incompetence and unthrift, enabling them to bring forth more of their kind.” A. B. Wolfe (1917, p. 278), an American progressive economist who would later become president of the AEA [American Economic Association] in 1943, also argued for the eugenic virtues of removing from employment those who “are a burden on society.” (2005, 213–14)

The drive to establish a minimum wage was one of the most highly praised “reforms” of the Progressive Era. (The national minimum wage finally was established during the New Deal and now is at more than \$7.00 an hour.) For Progressives and their intellectual descendants who believe that free markets are oppressive, the creation of legal monopolies through things such as a minimum wage, occupational licensing, and industry regulation (which created legal cartels complete with monopoly rents) as well as laws restricting entry into markets are seen as “liberating” consumers and producers. That these restrictions and laws create legal economic rents that necessitate political competition between interest groups—competition that often turns physically violent—is the *real* blind spot of modern historians.

Regulations, Racism, and Rent Seeking

Economic literature for the past four decades has demonstrated the relationship between the regulatory process and rent seeking. That regulation of business and professional enterprises would have an economic role aside from allegedly creating social improvement and minimizing “market failures” would come as a surprise to many historians, who tend to hold the Pigovian (Pigou 1932) view of regulation and to believe in what Higgs calls the “Modernization Hypothesis.” Higgs writes: “Reading between the lines of many historical works, one encounters the Modernization Hypothesis. It maintains that a modern urban–industrial economy simply must have

an active, extensive government; that laissez-faire in the late twentieth century is unimaginable. Declamations about the absurdity of horse-and-buggy government in the Space Age or the impossibility of turning back the clock of history give rhetorical thrust to the idea” (1987, 7).

However, beyond the concept of government economic regulation being a “Space Age” endeavor, a number of economists over the years have strongly established the connection between regulation and rent seeking. Ann Krueger notes that government restrictions on economic life “give rise to rents of a variety of forms and that people often compete for the rents” (1974, 291). George Stigler demonstrates that regulation was “acquired by the [regulated] industry and is designed and operated primarily for its benefits” (1971, 3), with the purpose being to reduce competition and prevent new entry into the industry. Bruce Yandle writes in his well-known paper on the “Baptist and bootlegger” analogy of regulation: “[W]hat do industry and labor want from the regulators? They want protection from competition, from technological change, and from losses that threaten profits and jobs. A carefully constructed regulation can accomplish all kinds of anticompetitive goals of this sort, while giving the citizenry the impression that the only goal is to serve the public interest” (1983, 13).

Such a viewpoint contrasts with what Progressives believed, and in reading Woodward and Southern on the rise of the regulatory state during the Progressive Era, one certainly cannot conclude that this area of state growth had any harmful effects, and, in fact, the Progressive historians praise it effusively. In their works, there is no connection between the rise of regulation and the rise of Jim Crow policies other than that they occurred at about the same time.

David E. Bernstein (2001) comes to much different conclusions; as he notes on numerous occasions, government restriction of business and professional enterprises left black Americans on the outside both in having their economic opportunities diminished and in being unable to receive services that once had been available to them. From attempts to block out migration of labor to laws favoring labor unions, and from professional licensing to the Davis-Bacon Act and minimum-wage laws, Progressives enacted rules and legislation that paralleled Jim Crow laws in their effects.

Bernstein gives numerous examples of how Progressive Era regulations negatively affected black Americans, but we will restrict ourselves to one of those examples, medical licensing, and how this regulation effectively closed the medical field to blacks for many decades. The highly influential Flexner Report, *Medical Education in the United States and Canada*, written by educator Abraham Flexner and published by the Carnegie Foundation in 1910, called for limiting opportunities for medical studies, arguing that this limitation would produce better physicians. Writes Bernstein: “The Flexner Report was written at the height of Progressive faith in social planning and distrust of market competition. Flexner believed that society would be far better served with fewer, but better trained, physicians, who would be educated at universities instead of at for-profit medical schools” (2001, 41).

At the time, there were seven medical schools that trained black doctors. By pushing the higher standards of the all-white American Medical Association (which did not admit African Americans to membership), five of the schools inevitably were shut down, leaving only the medical school at Howard University in Washington, D.C., and Meharry Medical School in Nashville, Tennessee, for aspiring black doctors who were not admitted to white medical schools. That this restriction placed a hardship upon blacks in general, who would not be able to gain medical care, did not faze Flexner and his supporters. Writes Bernstein: “Physicians were rare in the rural southern Black Belt, and white physicians who were available often charged fees beyond most African Americans’ means. Many African Americans relied on local ‘healers’ who had no formal medical education. Nevertheless, Flexner explicitly rejected the notion that the African American community would be better off with less costly and more readily available medical personnel whose training did not meet his standards than with a great shortage of medical personnel” (2001, 42).

At the time of the Flexner Report, writes Bernstein, African Americans made up about 2 percent of all doctors in this country, which was nearly double the percentage of the previous decade. However, after the Flexner standards became imposed, black doctors as a percentage of the overall medical profession fell and did not rise again until the latter years of the twentieth century. Although the stricter medical standards and physicians’ licensing laws were, as Bernstein puts it, “facially neutral” (2001, 44), nonetheless their real effects provided a financial boon to white doctors, who not only had more opportunities but also did not have to worry about competition from black physicians. The Flexner standards were not imposed specifically to severely limit black employment in the medical fields, but they had that effect and in the process created new economic rents for white doctors. (Flexner implicitly recognized that if his recommendations were followed, there would be fewer black doctors, but he argued that current training for many black doctors was inadequate and that “an essentially untrained negro wearing an M.D. degree is dangerous” [qtd. in Bernstein 2001, 42]. He also held that blacks essentially were ignorant and easily “taken in” in regards to medical care, so a paternalistic system in which blacks would depend on white charity would be better than having more black doctors that did not have the training that he was demanding.)

Rothbard concurs with Bernstein that the Flexner Report was not about improving medical care, but rather about enabling established white doctors to eliminate some of their competition. Writes Rothbard:

The result [of the Flexner Report]: every medical school and hospital was subjected to licensing by the state, which would turn the power to appoint licensing boards over to the state AMA. The state was supposed to, and did, put out of business all medical schools that were proprietary and profit-making, that admitted blacks and women, and that did not specialize in orthodox, “allopathic” medicine: particularly homeopaths, who were

then a substantial part of the medical profession, and a respectable alternative to orthodox allopathy.

Thus through the Flexner Report, the AMA was able to use government to cartelize the medical profession: to push the supply curve drastically to the left (literally half the medical schools in the country were put out of business by post-*Flexner* state governments), and thereby to raise medical and hospital prices and doctors' incomes. (2006, 76–77)

American labor unions were not as paternalistic as Flexner, and so they specifically and openly sought to make their organizations all white and to use the law to exclude blacks from certain workplaces. Although the railroad firms, Bernstein writes, had incentives to hire African Americans, their unions were adamantly opposed to the idea, especially to hiring blacks as train engineers and brakemen. He notes that despite the violence of frequent strikes, railroads in the South continued to hire black workers, but after World War I, when the federal government gained a much stronger hold on railroad regulation, federal regulatory agencies stepped in on behalf of white union workers and forced railroad companies temporarily to implement the union demands. In 1926, Congress passed the Railway Labor Act, which further empowered the white unions, and Progressive New Deal legislation would doom black railroad workers to menial positions—that is, when they were permitted to work for railroads at all.

The creation of economic rents through the regulatory process has been well documented, and the creation of Jim Crow laws also further enabled white workers to gain at the expense of blacks. However, much of the literature on rent seeking focuses on the gains by *private* entities that are successful in using the government's regulatory and statutory apparatus. As Jennifer Roback (1989) and Fred McChesney (1997, 1998) write, politicians also gain rents from the political process, and although a number of statutory Jim Crow measures did not confer direct economic benefits on private parties, they did empower the politicians who created and expanded these laws, as Roback points out.

Looking at the laws that required segregated seating on streetcars and other public transportation that arose during the late 1890s and early 1900s, Roback notes that the streetcar companies did not demand these laws, nor did the laws simply codify existing practices (as Southern and Woodward seem to suggest). She suggests that the codification was the result of “political entrepreneurship” by elected officials: “The most likely candidates [for pushing these new laws] are politicians who believed that there existed latent sentiment in favor for segregation among whites. Political entrepreneurs could offer voters something they valued enough to vote for, but not enough to bear the costs privately. Through collective action, the costs of segregation could be imposed on the [disenfranchised] black passengers and the [regulated] streetcar companies” (1989, 674). She says that such measures fell into the category of what she calls “psychic rent seeking,” in which people are able to use collective

action by government to gain psychological benefits for themselves but to impose the direct costs upon others. However, one also should add that the economic restrictions that were imposed during the Progressive Era had very real financial benefits for those not adversely affected by the rules.

In 1887, Florida became the first state to mandate segregation on railroads and by 1890 had been followed by Mississippi, Texas, and Louisiana. Louisiana's law, ostensibly "to promote the comfort of passengers," required all railroads carrying passengers in the state to "provide equal but separate accommodations for the white and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the coaches by a partition so as to secure separate accommodations" (Brands 1995, 222). *Several railroad firms opposed the law and did not enforce it out of concern over alienating black customers and the cost of adding cars when they may not be needed*; and in 1892 the state Supreme Court, in a suit brought by Pullman, held the law to be a violation of the Commerce Clause and void with respect to interstate passengers—while leaving segregation within the state intact. Hence, a test case was arranged, with the East Louisiana Railroad notified in advance. That case would be *Plessy vs. Ferguson*, in which the U.S. Supreme Court in 1896 ruled in favor of "separate but equal" segregation as ordered by the state of Louisiana (Brands 1995, 222–223).

Jim Crow laws also imposed real costs upon employers who hired blacks to work near whites. First, there would be the necessity to construct things such as "colored" bathrooms, to install "colored" water fountains, and to use other physical measures to ensure that black workers did not intermingle with whites. Second, Jim Crow laws also emphasized the fact that blacks were out of favor with governing authorities and that employers protected them at their own costs and at their own risk.

Moreover, segregation laws that extended to education limited education and training opportunities for black Americans. Roback writes that education segregation involved actual resource transfers from blacks to whites, and she gives evidence on funding in the public schools in the "Black Belt" portion of the American South. She notes that during the Jim Crow era state education funding to counties was given according to the number of school-age children there; the white-controlled school boards then allocated the lion's share of the money to white schools despite the fact that there were more black children than white children in those counties. Citing Robert Margo's 1985 essay "Race, Education Attainment, and the 1940 Census," Roback writes that the "higher proportion of black students is indeed correlated with higher expenditures on white education, and lower expenditures on black education" (1989, 678).

Just as many of the licensing laws and other economic restrictions of the Progressive Era negatively affected blacks even though they did not have explicit racial language in them, Jim Crow laws did not specifically deny black Americans opportunities to work, but they established so many barriers that a black person's competition with whites for skilled positions became very unlikely. These two sets of laws

complemented each other as the regulatory regimes created economic rents that whites could exploit, and Jim Crow laws helped ensure that whites would not have as much competition for those rents.

The Progressive Era regulations and laws also emphasized educational attainment as part of the “credentialing” process that would ensure that “competent experts” would be employed in positions that perhaps previously would have gone to people who did them well without formal education playing such an important selection role. Segregation of educational facilities and unequal funding also not only contributed to the lack of education by black Americans but also guaranteed they would have fewer “credentials” required to enter many professional fields.

Conclusion

The economic and racial legacies of progressivism are not spiritual or intellectual opposites, despite what historians and their supporters claim. If the political classes create and distribute economic rents, they inevitably invite political competition for those rents, which belies their belief that political competition is somehow morally superior to economic competition.

Historians have long been aware of American Progressives’ racial attitudes and viewpoints, and although they have not necessarily excused such views, they nonetheless have written them off as being the result of “myopia” or simple “blind spots.” They have failed to draw the conclusion that the very economic reforms that characterized the Progressive Era required accompanying Jim Crow legislation as an enforcement mechanism to ensure that the economic spoils system they created could be held together.

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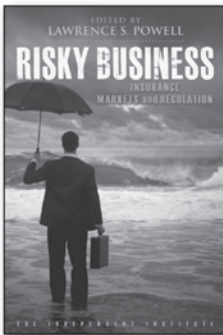
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